



Environment and Natural Resources Division

BSG:MCE/cac
90-11-3-08764

Corrine A. Christen
Environmental Enforcement Section
1961 Stout Street - 8th Floor
Denver, CO 80294

Telephone (303) 844-1379
Facsimile (303) 844-1350
Corrine.Christen@usdoj.gov

August 31, 2007

VIA OVERNIGHT FEDEX

Kevin R. Murray
Chapman & Cutler, LLP
201 South Main Street, Suite 2000
Salt Lake City, UT 84111
(801) 533-0066

Re: United States v. United Park City Mines Co., No. 2:07-cv-00642-BSJ
(Richardson Flat Tailings Site)

Dear Mr. Murray:

Enclosed is a copy of the Complaint and Notice of Lodging (with lodged Consent Decree) in the above-captioned case, which were filed on August 28, 2007 in Salt Lake City, Utah. This constitutes notice from the United States that the Consent Decree has been lodged and service of the complaint as contemplated by Paragraph 102, of the Consent Decree.

Should you have any questions, please contact Mark Elmer at (303) 844-1352.

Sincerely,

Corrine A. Christen, CP
Paralegal Specialist

Enclosures

cc: Peggy Livingston, Esq. (EPA)

I gave the copy that was enclosed with this (with the signatures of all but court) to Maureen O'Reilly 10-24-07. I also gave her an extra copy of 47 with the Judge's signature. I will send/bring the copy with the J's signature to the Superfund Records Center. PL

TZ / Mark 9.4.07

only Complaint + Notice of Lodging in arts electronic
docket. Not CD.

- Pacer - with password can get filed doc + that's how Dog
got it.

Mark Never got copy from US Atty office

FILED
U.S. DISTRICT COURT

BRETT L. TOLMAN (#8821), United States Attorney
DANIEL D. PRICE (#2646), Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111
(801) 325-3234 (PHONE)
(801) 524-6924 (FAX)
daniel.price2@usdoj.gov

2007 AUG 28 P 3:45

DISTRICT OF UTAH

BY: 
DEPUTY CLERK

MARK C. ELMER (*Pro hac vice*)
Trial Attorney, Environmental Enforcement Section
United States Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80206
(303) 844-1352 (PHONE)
(303) 844-1350 (FAX)
mark.elmer@usdoj.gov

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNITED PARK CITY MINES COMPANY,

Defendant.

Case No.

COMPLAINT

Case: 2:07cv00642
Assigned To : Jenkins, Bruce S.
Assign. Date : 8/28/2007
Description: USA v. United Park City
Mines

The United States of America, by authority of the Attorney General, and at the request of
the United States Environmental Protection Agency ("EPA"), states for its complaint:

NATURE OF ACTION

1. This is a civil action under Sections 106 and 107 of the Comprehensive

Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The United States seeks injunctive relief and recovery of response costs that it has incurred since March 2, 2006 and that it will incur in connection with the Richardson Flat Tailings Site near Park City, Utah (the "Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 42 U.S.C. §§ 9606, 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b).

DEFENDANT

4. Defendant United Park City Mines Company ("UPCM") is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 900 Main Street, Suite 6107, Park City, Utah 84060.

GENERAL ALLEGATIONS

A. The Site

5. The Richardson Flat Tailings Site consists of approximately 160 acres outside Park City, Utah immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248.

6. From the late 1800s through approximately 1982, the Site was actively used as a mine tailings impoundment.

7. Defendant United Park City Mines Company ("UPCM") has owned the Site since its incorporation in 1953.

8. In 1970, UPCM leased the Site along with other mining-related properties to Park City Ventures, a Utah general partnership between the Anaconda Company (now part of Atlantic Richfield Company ("ARCO")) and ASARCO, Inc.

9. On a portion of the property leased from UPCM, Park City Ventures constructed and operated a mill, known as the Ontario Mill. Between June 1975 and January 1978, the Ontario Mill generated tailings that were deposited at the Richardson Flat Tailings Site.

10. In August 1979, Park City Ventures transferred its lease with UPCM (including the Ontario Mill and the Richardson Flat Tailings Site) to Noranda Exploration Inc., who in turn sold it to Noranda Mining Inc. ("Noranda"). Noranda operated the Ontario Mill from August 1980 through August 1981, generating tailings that were deposited at the Site. In April 1982, UPCM terminated the lease.

11. There are approximately 7 million tons of mine tailings currently on the Site.

B. EPA Response Actions

12. In the mid-1980s, EPA conducted an initial investigation of the Site, which revealed that the Site (including the tailings and surface and groundwater) was contaminated with hazardous substances, including heavy metals such as arsenic, cadmium, lead, and zinc.

13. On June 24, 1988, EPA proposed to add the Site to the National Priorities List ("NPL"). This initial proposal was withdrawn, and on February 7, 1992, EPA re-proposed adding the Site to the NPL. No final action has been taken with respect to this proposed listing.

14. On September 28, 2000, EPA and UPCM entered into an Administrative Order on Consent ("AOC"). The AOC required UPCM to conduct a remedial investigation and feasibility study ("RI/FS") at the Site.

15. In September 2004, UPCM completed both the remedial investigation and feasibility study.

16. EPA published its proposed remedial action plan on September 5, 2004. Following public comment, EPA issued a record of decision ("ROD") for the Site on July 6, 2005, which describes EPA's selected remedy.

CERCLA LIABILITY

17. The Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

18. The substances contaminating soils and waters at the Site are "hazardous substances," within the meaning of Sections 101(14), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9604(a), and 9607(a).

19. There was a "release" or "threatened release" of hazardous substances into the "environment" at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

20. Hazardous substances were "disposed" of at the Site, within the meaning of Sections 101(14), 101(29), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(29), and 9607(a), on numerous occasions from the late 1800s until at least 1982.

21. Defendant UPCM is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. Defendant UPCM is the current "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(1).

23. Defendant UPCM was an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of disposal of hazardous substances at the Site and is therefore liable for all costs incurred by the United States as a result of the response action at the Site pursuant to CERCLA Section 107(a)(2).

FIRST CLAIM FOR RELIEF
INJUNCTIVE RELIEF UNDER SECTION 106(a) OF CERCLA

24. Paragraphs 1 through 23 are re-alleged and incorporated herein by reference.

25. EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at and from the Site.

26. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is liable to perform certain response actions selected by EPA to abate the conditions at the Site that present or may present an imminent and substantial endangerment to the public health or welfare or the environment.

SECOND CLAIM FOR RELIEF
COST RECOVERY UNDER SECTION 107(a) OF CERCLA

27. Paragraphs 1 through 26 are re-alleged and incorporated herein by reference.
28. The United States has incurred and will continue to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), as a result of the release or threatened release of hazardous substances at the Site.
29. The response costs were incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.
30. Defendant is liable to the United States for the payment of all costs incurred (since March 2, 2006) and to be incurred by the United States as a result of the response actions taken at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court enter judgment against Defendant as follows:

- A. Ordering Defendant to perform certain response actions selected by EPA in order to abate the conditions at the Site;
- B. Ordering Defendant to pay all costs incurred by the United States since March 2, 2006 in response to the release or threatened release of hazardous substances at or from the Site;
- C. Awarding the United States its costs and disbursements in this action; and
- D. Granting the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division

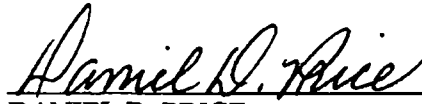


W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section



MARK C. ELMER, Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1352 (PHONE)
(303) 844-1350 (FAX)

BRETT L. TOLMAN
United States Attorney
District of Utah



DANIEL D. PRICE
Assistant United States Attorney
District of Utah
185 South State Street, Suite 400
Salt Lake City, UT 84111

OF COUNSEL:

MARGARET ("PEGGY") J. LIVINGSTON
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1129

Attorneys for the United States

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel D. Price, U.S. Attorney's Office, 185 S. State St., Suite 400, Salt Lake City, UT 84111; (801) 325-3234 AND Mark C. Elmer,

DEFENDANTS

United Park City Mines Company

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Kevin R. Murray, Chapman & Cutler LLP, 1000 Kearns Bldg., 136 South Main Street, Salt Lake City, UT 84101; (801) 320-6700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Sections 9606 and 9607

Brief description of cause:

CERCLA action to recovery costs and require environmental cleanup

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

08/20/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

Case: 2:07cv00642

Assigned To : Jenkins, Bruce S.

Assign. Date : 8/28/2007

Description: USA v. United Park City Mines

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2007 AUG 28 P 3 46

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED PARK CITY MINES COMPANY,

Defendant.

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Civil Action No.

Case: 2:07cv00642
Assigned To : Jenkins, Bruce S.
Assign. Date : 8/28/2007
Description: USA v. United Park City
Mines

NOTICE OF LODGING OF PROPOSED CONSENT DECREE

The United States has filed a Complaint pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), for recovery of response costs and implementation of remedial action at the Richardson Flat Tailings Site ("Site"), located approximately 1.5 miles northeast of Park City, Utah.

By way of this Notice, the United States notifies the Court that the United States has lodged a proposed Consent Decree in this matter (the "Decree"). The Decree, which is attached as Exhibit A, would resolve the United States' claims against Defendant for recovery of response costs and implementation of remedial action relating to the Site. The ultimate entry of the Decree would end this litigation.

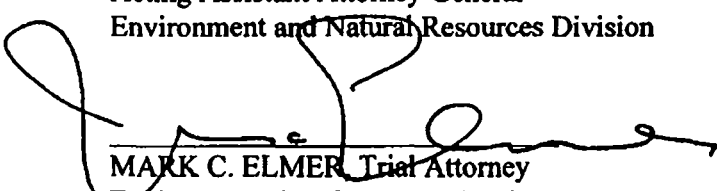
The Court should not sign the Decree at this time. Instead, the Decree should remain lodged with the Court while the United States provides an opportunity for public comment in accordance with CERCLA Section 122(d)(2), 42 U.S.C. § 9622(d)(2), and the policy of the

Department of Justice, 28 C.F.R. Part 50.7.

The Department of Justice will publish in the Federal Register a notice that the Decree has been lodged with the Court. The Notice will solicit public comment for a period of 30 days. During the comment period, no action is required by the Court.


Respectfully submitted,

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division



MARK C. ELMER, Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1352 (PHONE)
(303) 844-1350 (FAX)

BRETT L. TOLMAN
United States Attorney
District of Utah



DANIEL D. PRICE
Assistant United States Attorney
District of Utah
185 South State Street, Suite 400
Salt Lake City, UT 84111

OF COUNSEL:

MARGARET ("PEGGY") J. LIVINGSTON
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street, Suite 300 (8ENF-L)
Denver, CO 80202-1129

Attorneys for the United States